HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.706 of 2007

Between:

Katragadda Nagamallewara Rao @Babu

… Appellant

AND

The Commissioner of Police,
Vijayawada city, Krishna District,
and another.

… Respondents

; JUDGMENT :

Counsel for the appellant : Sri Kanakamedala Ravindra Kumar

Counsel for the respondents : Assistant Government Pleader for Home.

Dated: 5th September, 2007

Per C.V.NAGARJUNA REDDY, J.

The appellant who was unsuccessful in persuading the learned Single Judge to set aside the proceedings of Commissioner of Police, Vijayawada City, Krishna District – Respondent No.1, whereby he opened "suspect sheet" against the appellant in Krishnalanka Police Station, Vijayawada, filed the present appeal.

The appellant is a resident of Vijayawada city. He claims to be in active politics being Vice President of Vijayawada Urban Telugu Desam Party, Krishna District. He also claims to be associated with institutions such as Red-Cross Society, Rotary Environment Protection and Greenery etc. In the year 2004 a rowdy sheet was opened against the appellant in VI Town Police Station, Vijayawada. The appellant filed Writ Petition No.10418 of 2004 wherein he questioned opening of the rowdy sheet. The said writ petition was allowed by a learned Single Judge of this Court vide his order dated 15.9.2004 on the ground that the appellant was acquitted in all the criminal cases and that no case was pending as on the date of disposal of the writ petition. The appellant alleged in the affidavit filed in support of the writ petition that after closing the rowdy sheet, the respondents opened a suspect sheet vide sheet No.243 of 2004 at the instance of his political rivals belonging to the ruling party and that in the guise of opening of the suspect sheet the respondents are harassing the appellant in every possible manner.

Sri Umesh Sharraf, Commissioner of Police, Vijayawada city filed a counter affidavit wherein it was averred that the appellant was accused in as many as four criminal cases registered for offence under Section 302 IPC apart from other offences of the IPC, and four other cases

involving other offences. It is further averred that 6 out of 8 cases against the appellant ended in acquittal as all the eye witnesses have turned hostile and that a case registered for the offences under Sections 143, 188 and 341 read with Section 149 IPC is pending trial as C.C.No.647 of 2005 on the file of II Additional Chief Metropolitan Magistrate Court. It is further stated in the counter affidavit that the appellant who belongs to a main political party has lot of political rivals; that he is planning to harm his opponents with the assistance of his followers; that in order to keep a watch on the appellant's activities and shady movements, a rowdy sheet was opened and it was closed on 30.11.2004 in compliance with the order dated 15.9.2004 passed in Writ Petition No.10418 of 2004. It is further stated in the counter affidavit that on 26.8.2004 one K.Satyanarayana @ Satyam and V.Santhan Kumar, who are rowdy sheeters and opponents of the appellant made an attempt on the latter's life and he escaped with minor injuries and that the appellant is in the habit of accommodating bad characters in his house for counter attack on his opponents and that therefore, there is an imperative need for the police to keep a watch of the movements of the appellant in order to prevent attack on/against him. It is submitted that opening of suspect sheet facilitates frequent checks of the activities of the appellant.

The learned Single Judge having been satisfied with the justification offered by the respondents in opening the suspect sheet, dismissed the writ petition by his order dated 3.7.2007 against which the present writ appeal is filed.

Heard Sri K.Ravindra Kumar, learned counsel for the appellant and the learned Assistant Government Pleader for Home.

The learned counsel for the appellant submitted that the respondents having been unsuccessful in continuing the rowdy sheet against the appellant which was closed following the order of this Court

in the previous writ petition, are not justified in opening a suspect sheet which was intended only to circumvent the order passed by this Court in the said writ petition. The learned counsel further submitted that opening of the suspect sheet curtailed his right to liberty guaranteed under Article 21 of the Constitution of India.

Learned Assistant Government Pleader for Home opposing the contention of the learned counsel for the appellant submitted that a person who has strong criminal background having been involved in a number of murder cases in the past needed to be under a watch in order to maintain peace and public order in the Vijayawada City. He also submitted that the respondents, having realized the necessity of preventing attacks/counter attacks by or against the appellant, opened the suspect sheet which is in exercise of powers vested in them under Police Standing Orders No.600-I(B) of the Andhra Pradesh Police Manual, Volume-II.

We have given our serious thought to the rival submissions of the learned counsel appearing for the parties.

The fact that the appellant was accused in as many as four criminal cases tried for the offences punishable under Section302 and various other offences of the IPC besides about five other cases registered for various other offences of IPC is not in dispute. The only contention of the learned counsel for the appellant is that all those criminal cases ended in acquittal. A perusal of the averments in the counter affidavit shows that S.C.No.205 of 1994, S.C.No.182 of 1994, S.C.No.93 of 1997 and S.C.No.14 of 1996 in which the appellant was the accused, were tried for various offences including an offence under Section 302 IPC and they ended in his acquittal on the ground that the main witnesses turned hostile.

It is also not in dispute that C.C.No.647 of 2005 on the file of the II Additional Chief Metropolitan Magistrate Court taken cognizance for the offences under Sections 143, 188 and 341 read with Section 149 of IPC is pending against the appellant. The learned Single Judge allowed Writ Petition No.10418 of 2004 and quashed the rowdy sheet against the appellant mainly on the ground that there was no case pending as on the date of disposal of the writ petition against the appellant. In the counter affidavit the respondents relied upon Standing Order No.600-I(B) in support of their contention that suspect sheets can be opened against persons who are not convicted in any criminal case but who are believed to be addicted to crime. No rejoinder affidavit was filed by the appellant in the writ petition to controvert any of the averments contained in the counter affidavit, nor the learned counsel for the appellant disputed before us the existence of the power with the respondents to open a suspect sheet against the persons who are not convicted, but having criminal record.

Ordinarily when a citizen complains of deprivation of personal liberty, which is a fundamental right enshrined in Article 21 of the Constitution of India, it is the duty of the superior courts to zealously protect this valuable fundamental right. But the uncontroverted facts of the present case reveal that the State is seeking to subject a person having a criminal background to surveillance which is permitted by law. Undisputedly, the Standing Orders permit the respondents to take the measures as they did, namely, opening of a suspect sheet to keep a watch on the activities of the appellant. Article 21 of the Constitution of India is subject to an exception, namely, that a person's personal liberty can be curtailed/deprived in accordance with the procedure established by law. Having carefully considered the facts of the case we are of the considered view that the action of the respondents in opening a suspect

sheet against the appellant has not resulted in violation of any legal or constitutional provisions nor the liberty of the appellant is deprived in violation of the constitutional right guaranteed by Article 21 of the Constitution of India. In our view the learned single Judge has not committed any error in declining to quash the action of respondents in opening the suspect sheet.

For the aforementioned reasons, the writ appeal fails and is accordingly dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.1425 of 2007 filed seeking interim direction is also dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

G.S. SINGHVI, CJ

Date: 05.09.2007
MDAA